

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Imperial Valley Resource Recovery
Company LLC
3505 Highway 111
Imperial, California 92251
CAC002563257

Respondent.

Docket HWCA 2003-0401

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Imperial Valley Resource Recovery Company LLC, (Respondent) enter into this Consent Order and agree as follows:

1. Respondent is a generator of hazardous waste. It is located at 3505 Highway 111, Imperial, California 92251 (Site).
2. The Department inspected the Site on December 16, 2003.
3. The Department alleges the following violations:
 - 3.1. The Respondent violated Health and Safety Code (H&SC) section 25201(a), in that on or about the period from February 2002 to March 2003, Respondent stored hazardous waste in piles at the Site without a permit.
 - 3.2. The Respondent violated California Code of Regulations, title 22, section 66262.34 (c) and H&SC section 25201(a), in that on or about

December 16, 2003, Respondent stored hazardous wastes in containers and tank at its facility for more than 90 days without a permit or other grant of authorization from the Department. Respondent stored used oil in a 1,000-gallon tank, and oil contaminated debris in 22 55-gallon containers.

3.3. The Respondent violated California Code of Regulations, title 22, section 66262.31(f), in that on or about December 16, 2003, Respondent failed to label each container and tank used for storage of hazardous wastes.

3.4. The Respondent violated California Code of Regulations, title 22, section 66265.173(a), in that on or about December 16, 2003, Respondent failed to close containers holding hazardous wastes.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance with applicable hazardous waste requirements.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit or preclude the Department from taking appropriate enforcement action concerning other violations.

9. Respondent does not admit the violations alleged above, except as follows: Respondent admits the facts alleged above for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the date the violation occurred.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

- 10.1.1. Respondent certified through its submittal dated February 3, 2004, that they disposed of all the fly ash on March 24 through 27, 2003.
- 10.1.2. Respondent certified through its submittal dated January 29, 2004, that all the used oil and oil contaminated dirt and debris were properly disposed.
- 10.1.3. Respondent certified through its submittal dated January 29, 2004, that they labeled each container and tank holding hazardous waste during storage.
- 10.1.4. Respondent certified through its submittal dated January 29, 2004, that they kept all the containers holding hazardous waste closed during storage.
- 10.1.5. Respondent hereby agrees to send the following employees to the California Compliance School Modules I through IV:

Manuel Perez - Plant Manager

Diana Madrid - Business Manager

Attendance must be completed and Respondent must submit a Certificate of Satisfactory Completion to the Department within 185 days of the date of this Consent Order. If Respondent fails to submit the Certificate of Satisfactory Completion as required, the penalty of \$5,000 referenced in paragraph 11.1 of this Consent order, is due and payable within 30 days after the expiration of the 185-day period. The 185-day period may be extended by the Department upon written request demonstrating good cause from Respondent.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division, Cypress Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as

a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.7. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.8. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other

documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.9. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.10. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.11. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.12. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11. Within thirty-five (35) days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$23,840, of which \$17,770 is a penalty, and \$6,070 is reimbursement of the Department's costs for the violations identified in paragraph 3 of this Consent Order.

11.1. If Respondent fails to submit the Certificate of Satisfactory Completion as required and specified in paragraph 10.1.5 of this Consent Order, a penalty of \$5,000 is due and payable within thirty (30) days after the expiration of the 185-day period.

11.2. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number as shown in the heading of this Consent Order. Respondent shall deliver the payment together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division, Cypress Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

Colleen Heck, Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above,

Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, members, managers, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department and mailed by United States Mail to Respondent by certified mail with return receipt requested.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Consent Order.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or California Regional Water Quality Control Board. Nothing in this paragraph is intended to, or does, expand the jurisdiction of the Department to enforce provisions of permits, statutes, regulations or any other source of regulatory requirements that it otherwise would not have the authority to enforce.

Dated: January 31, 2005

Original signed by Manuel Perez

Manuel Perez, Plant Manager

Imperial Valley Resource Recovery Company

Dated: February 2, 2005

Original signed by Carmelita E. Lampino

Carmelita E. Lampino, Unit Chief

Statewide Compliance Division,

Cypress Branch

Department of Toxic Substances Control